

AMENDMENT UNDER 37 C.F.R. §1.111
U. S. Application No. 10/779,623

REMARKS

Claims 7-15 are currently pending in the application. Claims 1-6 are canceled.

Claims 7, 8, 10, and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Mueller et al (U.S. 4,771,589). Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mueller in view of Baranowski (U.S. 5,407,057). Claims 9, 12, and 14-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant submits that Mueller fails to teach or suggest all of the limitations of the claims of the present invention. As the Examiner states in the Office Action, Mueller discloses that encased products (containers) are supplied in a first attitude “C” to a supply station “12” and then sorted to a first feed path “14” and a second feed path “16”. The encased products are in the first attitude “C” at the first feed path “14”, but inverted to a second attitude “C1” by an inverting apparatus 18 and then fed to the second feed path “16”. Further, the encased products in the first attitude “C” and second attitude “C1” are diverted by a gate mechanism “22” to conveyors 122 and 124, and the alternating encased products in the first and second attitudes are packaged by a packaging apparatus 26. Therefore, Mueller relates to a method and apparatus for packaging encased products which attitudes are alternately inverted.

By contrast, in the present invention, encased products to be packaged are selected and sorted from a first attitude in which the encased products are alternately arrayed and a second attitude in which the encased products are arrayed in one direction. In the present invention, it is selected whether the encased products should be packaged in a first attitude, or packaged in a second attitude (enclosed products arrayed in one direction). This technical feature of the

AMENDMENT UNDER 37 C.F.R. §1.111
U. S. Application No. 10/779,623

present invention is not disclosed or suggested in Mueller. Therefore, claims 7, 8, 10, and 11 are not anticipated by Mueller.

Furthermore, the Examiner states that Mueller supplies the encased products with the caps oriented in one direction. This disclosure is ambiguous in Mueller, as the specification does not state that the encased products are supplied with the caps oriented in one direction, or give a reason as to why it would be necessary to do so. Indeed, any ambiguity of the reference should be construed against the Examiner. See *In re Robertson*, 49 U.S.P.Q.2d 1949 (Fed. Cir. 1999).

Also, claim 7 recites that a sorting station selectively sorts the arrayed encased products. The Examiner contends that a sorting station sorts the encased products. However, the Examiner does not assert and the disclosure does not state that the sorting station selectively sorts the arrayed encased products. Since the cited reference does not disclose all the elements found in claim 7, claim 7 cannot be anticipated by Mueller. Claim 7 should be patentable over the prior art for the reasons described above.

Claims 8-15 should be patentable due to their dependence from claim 7.

The objections to claim 9, 12, and 14-15 should also be removed, as their base claims are patentable.

The rejection of claim 13 under §103(a) also cannot stand, as the combined references fail to disclose all of the elements of the base claim on which claim 13 is dependent, i.e., claim 7.

New claim 16 is added to further define the present invention. Claim 16 is allowable at least because of its dependence from claim 7.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

AMENDMENT UNDER 37 C.F.R. §1.111
U. S. Application No. 10/779,623

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Cameron W. Beddard
Registration No. 46,545

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: September 20, 2004